

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Stanislav Sazonov	Team: Team # 4	CCRB Case #: 201310431	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 03/12/2013 1:30 PM	Location of Incident: § 87(2)(b)	Precinct: 81	18 Mo. SOL 9/12/2014	EO SOL 9/12/2014	
Date/Time CV Reported Thu, 10/31/2013 1:11 AM	CV Reported At: IAB	How CV Reported: E-mail	Date/Time Received at CCRB Wed, 11/06/2013 12:45 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Kevin Buehler	04387	920059	MTN DET
2. SGT Alison Esposito	00000	920258	MTN DET
3. DT1 Brendan Carney		892856	MTN DET

Officer(s)	Allegation	Investigator Recommendation
A.SGT Alison Esposito	Abuse: Sgt. Alison Esposito authorized the entry of § 87(2)(b) in Brooklyn.	§ 87(2)(b)
B.DT3 Kevin Buehler	Force: Det. Kevin Buehler pointed his gun at § 87(2)(b)	§ 87(2)(b)
C.DT1 Brendan Carney	Force: Det. Brendan Carney pointed his gun at § 87(2)(b)	§ 87(2)(b)
D.DT1 Brendan Carney	Discourtesy: Det. Brendan Carney spoke discourteously to § 87(2)(b)	§ 87(2)(b)
E.DT3 Kevin Buehler	Discourtesy: Det. Kevin Buehler spoke discourteously to § 87(2)(b)	§ 87(2)(b)
F.SGT Alison Esposito	Discourtesy: Sgt. Alison Esposito spoke discourteously to § 87(2)(b)	§ 87(2)(b)
G.DT3 Kevin Buehler	Abuse: Det. Kevin Buehler did not obtain medical treatment for § 87(2)(b)	§ 87(2)(b)
H.SGT Alison Esposito	Abuse: Sgt. Alison Esposito did not obtain medical treatment for § 87(2)(b)	§ 87(2)(b)
I.DT1 Brendan Carney	Abuse: Det. Brendan Carney did not obtain medical treatment for § 87(2)(b)	§ 87(2)(b)

### Case Summary

On October 31, 2013, § 87(2)(b) field this complaint with the Internal Affairs Bureau (IAB) via e-mail (encl. 3A-3B). On November 6, 2013, this complaint was forwarded to and received by the Civilian Complaint Review Board (CCRB), with log number 13-46227 (encl. 3C-3D).

On March 12, 2013, at approximately 1:30 p.m., § 87(2)(b) was at his apartment, located at § 87(2)(b) in Brooklyn. Lt. Alison Esposito from Patrol Borough Bronx, who was a sergeant at the Midtown North Detective Squad at the time of the incident, Det. Kevin Buehler and Det. Brendan Carney, who is now retired, from the Midtown North Detective Squad went to § 87(2)(b)'s apartment. The following allegations resulted:

- **Allegation A – Abuse of Authority: Sgt. Alison Esposito authorized the entry of § 87(2)(b) in Brooklyn.**  
§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)
- **Allegation B – Force: Det. Kevin Buehler pointed his gun at § 87(2)(b)**  
§ 87(2)(g)  
§ 87(2)(g)
- **Allegation C – Force: Det. Brendan Carney pointed his gun at § 87(2)(b)**
- **Allegation D – Discourtesy: Det. Brendan Carney spoke discourteously to § 87(2)(b)**  
§ 87(2)(b)
- **Allegation I – Abuse of Authority: Det. Brendan Carney did not obtain medical treatment for § 87(2)(b)**  
§ 87(2)(g)  
§ 87(2)(g)
- **Allegation E – Discourtesy: Det. Kevin Buehler spoke discourteously to § 87(2)(b)**  
§ 87(2)(b)
- **Allegation F – Discourtesy: Sgt. Alison Esposito spoke discourteously to § 87(2)(b)**  
§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)
- **Allegation G – Abuse of Authority: Det. Kevin Buehler did not obtain medical treatment for § 87(2)(b)**
- **Allegation H – Abuse of Authority: Sgt. Alison Esposito did not obtain medical treatment for § 87(2)(b)**  
§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)

This case was not eligible for mediation.

## Results of Investigation

### Civilian Statements

#### Complainant/Victim: § 87(2)(b)

- § 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)

### Arrest Photo

§ 87(2)(b) does not appear to have any visible injuries on his person (encl. 5A).

### Statements to Medical Personnel

On § 87(2)(b), § 87(2)(b) was seen at his primary care physician's office, where he told § 87(2)(b) that he was arrested a couple of days ago and handcuffed (see Medical Records Folder).

On § 87(2)(b), § 87(2)(b) visited § 87(2)(b). § 87(2)(b) spoke to § 87(2)(b) and told him that he was involved in an altercation with a police officer on March 12, 2013. § 87(2)(b) said that he was assaulted by the police on that date. § 87(2)(b) told § 87(2)(b) that he had a previous altercation and possible harassment by the same officer. § 87(2)(b) complained that he injured his left shoulder during his most recent altercation with the police. (see Medical Records Folder).

### CCRB Statement

§ 87(2)(b) was interviewed at the CCRB on November 22, 2013 (encl. 4A-4C).

On March 13, 2013, at approximately 1:30 p.m., § 87(2)(b) was sleeping in his bedroom inside his apartment, located at § 87(2)(b) in Brooklyn. The door to § 87(2)(b)'s bedroom was locked and the door did not have a window. § 87(2)(b) was sleeping in a loft bed, which is approximately six and a half to seven feet above the ground. The entrance door to the apartment was approximately six feet away from § 87(2)(b)'s loft bed. § 87(2)(b) had a difficult time sleeping because he believed that he was overprescribed at the time. § 87(2)(b) suffered at the time a bipolar disorder and was taking Seroquel, an anti-psychotic drug, Xanax, to treat anxiety and panic disorder, Topiramate, an anticonvulsant or antiepileptic drug, and Trazodone, an antidepressant. § 87(2)(b) said that he was going through "very erratic behavior" for a couple of months and was "mentally ill" at the time of the incident. § 87(2)(b) took the aforementioned medications on the day of the incident and the medications affected his cognitive abilities.

§ 87(2)(b) heard loud banging on the door and recognized the sound as that of the officers from the Midtown North Precinct. § 87(2)(b) explained that he encountered the officers from the Midtown North Precinct on prior occasions and knew their *modus operandi*. The reason the officers came to § 87(2)(b)'s apartment was because he sent an e-mail to Det. John Moglia from the Midtown North Detective Squad on March 10, 2013, in which he called him a "jerk" for falsely arresting him and advised him that he was filing a complaint against him with IAB and the CCRB. § 87(2)(b) sent the e-mail to Det. Moglia's personal e-mail, which he said Det. Moglia gave to him on a prior occasion. § 87(2)(b) further indicated in his e-mail to Det. Moglia that he was going to press charges for the false arrest and that he felt suicidal, and

asked Det. Moglia for help. § 87(2)(b) also noted in his e-mail that he might commit a suicide by cop.

Later in the interview, § 87(2)(b) changed his statement and said that he did not know who was at the door. § 87(2)(b) explained that at the time, he had people from the mafia trying to kill him because he had a business that failed and said that he instructed his roommates prior to the incident date not to open the door because of that reason.

§ 87(2)(b) froze when he heard the banging and did not go to open the door. The officers screamed, § 87(2)(b) “come out” several times. § 87(2)(b) did not hear the officers say anything else, and he did not hear them announce themselves as police officers. § 87(2)(b) then changed his statement and said that he believed the officers might have identified themselves as police but did not hear them say that they had a warrant. The officers were banging on the door for approximately 30 minutes before his roommate, whom he identified as § 87(2)(b) opened the door. § 87(2)(b) heard the officers rush into the apartment and ask why she did not open the door earlier. The officers asked where § 87(2)(b) was, and § 87(2)(b) said that she did not know. The officers told § 87(2)(b) that § 87(2)(b) was stalking and harassing police officers and that they needed to find him immediately. § 87(2)(b) heard § 87(2)(b) say, “This is his bedroom,” and added that she did not know whether he was inside. § 87(2)(b) heard the officers say that they were coming in.

§ 87(2)(b) was still in his bed when the officers broke into his room. It took the officers approximately five seconds to gain entry, and § 87(2)(b) did not know what the officers did to gain entry into his room. On April 16, 2014, § 87(2)(b) said that the officers probably picked his lock by using a skeleton key, a credit card or some picking tool since there was no damage to the door. § 87(2)(b) also said that it took the officers approximately 30 seconds to one minute to gain entry into his bedroom.

§ 87(2)(b)'s vision is negative six in each eye and he cannot not see clearly. § 87(2)(b) saw approximately six police officers enter his room with their guns pointed at him. However, the CCRB investigation determined that Sgt. Alison Esposito from Patrol Borough Bronx, who was a sergeant at the Midtown North Detective Squad at the time of the incident, Det. Kevin Buehler and Det. Brendan Carney from the Midtown North Detective Squad, entered the room. Sgt. Esposito was described as a stocky female in her mid-30s, with dirty blond hair and in a white lab coat. Sgt. Esposito was the only officer who did not have her gun out.

§ 87(2)(b) asked Sgt. Esposito if she was a nurse, and she said that she was not. § 87(2)(b) asked if he could go to a psych ward, and was told no. Det. Buehler was described only as a stocky white male, in uniform, and approximately 5’8” tall. § 87(2)(b) could not describe Det. Carney because he was not wearing his prescription glasses but said that he was a white male and dressed in uniform.

The officers shouted, “Get the fuck down,” multiple times, and § 87(2)(b) asked who they were. The officers identified themselves as the police and again instructed him to get down. § 87(2)(b) told the officers, “Ok, don’t shoot me, don’t shoot me.” § 87(2)(b) said that he complied with getting down from the bed. However, he also said that the officers grabbed him by his clothes in the chest area and his arms, and pulled him down on the floor from his loft bed. The CCRB investigation determined that Det. Buehler was the only officer who pulled § 87(2)(b) down. § 87(2)(b) was going limp when Det. Buehler was pulling him down. § 87(2)(b) told the officers, “You guys are fucking nuts. What are you doing? You are fucking insane.”

§ 87(2)(b) dislocated his shoulder in the process of walking down and managed to pop it back in by the time he was on the ground. § 87(2)(b) fell on his knees and the officers pulled his hands behind his back and handcuffed him. § 87(2)(b) said that he was not resisting the arrest or trying to free his arms. It took the officers approximately five seconds to handcuff § 87(2)(b). He remained in his room on his knees while facing a wall. § 87(2)(b) did not know

what the officers were doing in his room but later learned that they seized his computer, cell phone and a Universal Serial Bus (USB) drive as evidence.

§ 87(2)(b) was “dragged” out of his apartment by the officers. When asked to describe how the officers “dragged” him, § 87(2)(b) said that he walked out of the apartment on his feet. When § 87(2)(b) was in the elevator with Sgt. Esposito, Det. Buehler and Det. Carney, he told them, “Go ahead and just shoot me right now.” The officers said no, and § 87(2)(b) replied, “Fuck you. Just go ahead and shoot me.”

§ 87(2)(b) said that he dragged his feet and he “struggled” with the officers the entire time. When § 87(2)(b) saw that the officers were taking him into a black unmarked vehicle, he thought that they may have lied to him about being police officers and began “kicking and screaming.” § 87(2)(b) screamed, “Just fucking kill me now. I don’t want to go through whatever fucking bull shit you want to put me through. Do it now whatever you gonna do.” § 87(2)(b) screamed approximately eight times asking the officers to kill him. § 87(2)(b) believed that the officers wanted to commit a suicide by cop on their terms but he wanted to do it on his terms. § 87(2)(b) said that he did not kick any officers or the car but resisted getting into the unmarked vehicle. § 87(2)(b) pulled away from the officers to prevent them from placing him in the unmarked vehicle.

§ 87(2)(b) was transported to the Midtown North Precinct stationhouse for arrest processing and was charged with harassing a police officer. § 87(2)(b) denied threatening Det. Moglia with physical harm.

§ 87(2)(b) asked for medical help throughout the incident but the officers told him that the quickest way to get out of police custody was to be quiet and comply with this. § 87(2)(b) was in treatment before and after the incident. He saw his primary care doctor on or about § 87(2)(b), as a result of the incident.

**Witness:** § 87(2)(b)

§ 87(2)(b) provided a telephone statement on April 2, 2014 (encl. 6A).

On March 12, 2013, at approximately 1:30 p.m., § 87(2)(b) heard knocking on the door to her apartment, located at § 87(2)(b) in Brooklyn. § 87(2)(b) was in the apartment with her roommate, known to the CCRB as § 87(2)(b) who was in his bedroom at the time. § 87(2)(b) heard the people knocking for approximately ten to twenty minutes but she did not want to open the door because she did not expect anyone and knew it was for § 87(2)(b). § 87(2)(b)'s room was toward the back of the apartment and she could not hear if the people were saying anything.

§ 87(2)(b) eventually went to open the door because she got annoyed that someone was knocking on the door for so long. § 87(2)(b) saw three to four police officers, who were identified via the CCRB investigation as Sgt. Alison Esposito, who was a sergeant at the Midtown North Detective Squad, Det. Brendan Carney and Det. Kevin Buehler from the Midtown North Detective Squad. The officers stood in the hallway. One of the officers had his gun drawn but it was held down. § 87(2)(b) did not remember if the officer who had the gun drawn was a male or a female.

The officers asked § 87(2)(b) who she was, and she explained. The officers asked where § 87(2)(b) was, and § 87(2)(b) said he was in his bedroom. The interaction between § 87(2)(b) and the officers took place in the hallway of the apartment. § 87(2)(b) was in his bedroom sleeping. § 87(2)(b) stated that § 87(2)(b) was passed out on pain killers and some other drugs she could not name. § 87(2)(b) went to her bedroom following her conversation with the officers.

The officers knocked on § 87(2)(b)'s bedroom door, which was locked, for approximately ten to fifteen minutes. § 87(2)(b) then heard § 87(2)(b) scream and yell, "Get

out of my apartment." § 87(2)(b) cursed at the officers, saying, "I'll fucking sue you. You can't fucking do this."

§ 87(2)(b) did not know if the officers said anything in response. § 87(2)(b) did not see § 87(2)(b)'s arrest because she was in her bedroom. § 87(2)(b) did not see the officers escort § 87(2)(b) in handcuffs, and she did not see § 87(2)(b) outside with the officers.

When § 87(2)(b) exited her bedroom, § 87(2)(b) was already out of the apartment. § 87(2)(b) did not see any damage to § 87(2)(b)'s door and she did not try to open it to see if it was locked. § 87(2)(b)'s dog was in the bedroom crying. § 87(2)(b) did not see any officer take the dog out for a walk.

§ 87(2)(b) later informed § 87(2)(b) that the reason the officers came was because he was threatening someone. § 87(2)(b) described § 87(2)(b) as a "shit head" who does "a lot of stupid things" and who is "involved in many legal battles" because such was his personality.

§ 87(2)(b) resides in § 87(2)(b) and she refused to provide her address.

### **NYPD Statements:**

#### **Subject Officer: SGT. ALISON ESPOSITO**

- *Sgt. Alison Esposito is a § 87(2)(b)-old white female, 5'7" tall, 130 pounds, with brown hair and hazel eyes.*
- *Sgt. Esposito is assigned to Patrol Borough Bronx Evidence Collection Team but on the day of the incident she was a sergeant assigned to the Midtown North Precinct Detective Squad. On March 12, 2013, Sgt. Esposito worked in plainclothes from 8:00 a.m. to 4:30 p.m. as the Midtown North Detective Squad Supervisor. Sgt. Esposito was not assigned a partner or a vehicle.*

#### **Memo Book Entries**

Sgt. Esposito recorded in her memo book that on March 12, 2013, at 12:30 p.m., she responded in RMP 225 to § 87(2)(b), in Brooklyn, in regards to threats to a member of the service. At 2:30 p.m., one arrest was made and she returned to the command. (encl. 7A-7B).

#### **CCRB Statement**

Sgt. Esposito was interviewed at the CCRB on April 16, 2014 (encl. 7C-7E).

On March 12, 2013, at approximately 1:30 p.m., Sgt. Esposito arrived at § 87(2)(b) in Brooklyn, in regards to threats made by an individual, known to the CCRB as § 87(2)(b) toward a detective, who was identified by Sgt. Esposito as Det. John Moglia from the Midtown North Detective Squad. Sgt. Esposito explained that when she arrived to work on March 12, 2013, she was informed that a website was discovered which contained threats toward Det. Moglia. Upon investigation into the threats, Sgt. Esposito discovered that Det. Moglia had previously arrested § 87(2)(b) for a domestic assault. § 87(2)(b) blamed Det. Moglia on the website for ruining his relationship. Sgt. Esposito did not recall what the website stated exactly but it alluded to an altercation that might happen between § 87(2)(b) and Det. Moglia. § 87(2)(b) further alluded in his message on the website that Det. Moglia's safety was in jeopardy. Sgt. Esposito perceived that message as a possible suicide by cop. The website, as Sgt. Esposito explained, was ultimately exuding violence and caused Det. Moglia to fear for his safety, and it caused Sgt. Esposito to fear for the safety of her detective squad. § 87(2)(b)'s girlfriend, whom he had assaulted, resided across the street from the Midtown North Precinct, which caused Sgt. Esposito to be concerned that § 87(2)(b) may return to the area.

Prior to leaving the squad for § 87(2)(b)'s residence, Sgt. Esposito spoke to the members of her squad, she debriefed Det. Moglia and spoke to the captain. The NYPD Threat Assessment Unit and the Legal Bureau were notified of the website. Sgt. Esposito then informed her squad that they were going to effect the arrest of § 87(2)(b) for aggravated harassment. Later in her interview, Sgt. Esposito said that there was a general consensus that there was probable cause for arrest. § 87(2)(b) had several addresses that were associated with him, and Sgt. Esposito was going to visit each one. § 87(2)(b) in Brooklyn, was the first address they went to. Sgt. Esposito went to § 87(2)(b)'s residence with four detectives, three of which she identified as Det. Kevin Buehler, Det. Kevin Homan and Det. Brendan Carney all from the Midtown North Detective Squad.

Upon arrival at § 87(2)(b) Sgt. Esposito instructed Det. Homan and another detective whom she could not identify by name to stay outside and guard the rear of the building to prevent escape. Det. Carney, Det. Buehler and Sgt. Esposito went to knock on § 87(2)(b)'s apartment door. The officers knocked for approximately five to ten minutes before a female, known to the CCRB as § 87(2)(b) opened the door. Sgt. Esposito, Det. Buehler and Det. Carney verbally identified themselves as the police and instructed § 87(2)(b) to come out of the apartment while still knocking at his door. Sgt. Esposito did not believe the officers had their guns out while they were knocking on the door. When § 87(2)(b) opened the door, she was visibly shaken and appeared to be petrified. Sgt. Esposito explained that she did not expect to see a female but saw that § 87(2)(b) began retreating back into the apartment. Sgt. Esposito later learned that § 87(2)(b) was § 87(2)(b)'s roommate.

Sgt. Esposito became concerned for the safety and wellbeing of § 87(2)(b) that she grabbed § 87(2)(b) by her arm and pulled her into the hallway. § 87(2)(b) complied with exiting the apartment. Sgt. Esposito asked § 87(2)(b) if § 87(2)(b) was inside, and § 87(2)(b) said that she thought he was. Sgt. Esposito perceived § 87(2)(b)'s response, her frightened state and the time it took her to open the door to be unsettling. § 87(2)(b) did not make any statements to the officers protesting their entry into the apartment. Det. Carney stayed with § 87(2)(b) in the hallway while Sgt. Esposito and Det. Buehler entered § 87(2)(b)'s apartment with their guns drawn.

Sgt. Esposito and Det. Buehler yelled, "Police," upon entering the apartment. Neither Sgt. Esposito nor Det. Buehler had an arrest warrant or a search warrant when they entered the premises. Sgt. Esposito and Det. Buehler began clearing the apartment by moving from room to room in a coordinated manner and communicating to each other when the area was safe. Sgt. Esposito did not remember how many rooms she cleared but it was more than one. There was a kitchen area at the entrance to the apartment, followed by a wall with a door to the right of the kitchen. There was another wall with a door, which happened to be the bedroom where § 87(2)(b) lived.

Once Sgt. Esposito and Det. Buehler reached § 87(2)(b)'s bedroom, they opened the door which was unlocked. The bedroom contained a loft bed, where § 87(2)(b) laid awake, with a ladder leading up to the bed. Det. Buehler and Sgt. Esposito told § 87(2)(b) to get down. Sgt. Esposito did not tell § 87(2)(b) "Get the fuck down," and she did not hear Det. Buehler make that statement.

Sgt. Esposito explained that she had safety concerns because she did not want § 87(2)(b) to attack them from above. Det. Buehler climbed up the ladder to escort § 87(2)(b) down. § 87(2)(b)'s bed was higher than Sgt. Esposito, who is 5'7" tall. Sgt. Esposito did not see what physical contact Det. Buehler had with § 87(2)(b) but she saw § 87(2)(b) went down the ladder by being pulled down. § 87(2)(b) descended the stairs with help from Det. Buehler and Sgt. Esposito. § 87(2)(b) flailed his arms in an attempt to prevent the officers from handcuffing him but it was minor and the officers were able to handcuff him by grabbing his

arms and pulling them behind his back. § 87(2)(b) was handcuffed standing, and he wiggled his shoulder once in handcuffs, and yelled, “This is a set up. I’m allowed to do this website.” Sgt. Esposito did not believe that § 87(2)(b) was on his knees at the time he was handcuffed.

Sgt. Esposito denied dislocating § 87(2)(b)’s shoulder, and she did not see Det. Buehler do so. § 87(2)(b) informed the officers that he had a previous injury to his shoulder and asked them to be careful. § 87(2)(b) did not claim that he sustained a shoulder injury from the arrest. § 87(2)(b) told the officers that he was on medication but Sgt. Esposito and Det. Buehler told him that they could not give him any. Sgt. Esposito and Det. Buehler offered to take § 87(2)(b) to a hospital but § 87(2)(b) refused.

Sgt. Esposito, Det. Buehler or Det. Carney did not search § 87(2)(b)’s room. § 87(2)(b) told the officers that he was on medications, and the officers looked for § 87(2)(b)’s medication, which was on the table. The table was located in front of the bed. Sgt. Esposito did not remember if the medication was on the table top or in the table drawer. § 87(2)(b) was in the hallway when § 87(2)(b) was arrested and could not see from the hallway into § 87(2)(b)’s bedroom.

§ 87(2)(b) was escorted outside. Sgt. Esposito did not remember if § 87(2)(b) asked the officers to shoot him, however, § 87(2)(b) was making statements telling the officers that they were there on behalf of Det. Moglia. § 87(2)(b) was psychologically fine at the time of his arrest. The officers took the elevator to bring § 87(2)(b) outside. § 87(2)(b) was screaming in the elevator.

§ 87(2)(b) was walked to a police vehicle and transported to the stationhouse. § 87(2)(b) resisted by kicking as he was being escorted. Sgt. Esposito did not know if § 87(2)(b) connected with his kicks but said that no detective went line of duty as a result of this incident. It was Det. Buehler and Det. Carney with occasional assistance from Sgt. Esposito who escorted § 87(2)(b).

At the stationhouse, Det. Buehler offered to obtain medical attention for § 87(2)(b) and explained that he would not be accepted to Manhattan Central Booking if he claimed injuries. § 87(2)(b) stated that he wanted to see a judge and wanted the incident to be over soon. § 87(2)(b) was asked at least three times if he wanted medical attention, and he declined it each time.

A search warrant was later obtained in order to confiscate anything that was connected to the crime § 87(2)(b) was charged with. Sgt. Esposito did not participate in searching § 87(2)(b)’s apartment. Sgt. Esposito learned about the warrant the next morning when she returned to work.

Sgt. Esposito was not sure if Det. Carney ever entered § 87(2)(b)’s bedroom. Sgt. Esposito did not have any further contact with § 87(2)(b) and she did not hear if any detective had any contact with § 87(2)(b) following the incident.

#### **Subject Officer: DETECTIVE KEVIN BUEHLER**

- *Det. Kevin Buehler is a § 87(2)(b)-old white male, 5’9” tall, 225 pounds, with brown hair and brown eyes.*
- *On March 12, 2013, Det. Buehler worked in plainclothes from 8:00 a.m. to 4:00 p.m. Det. Buehler was assigned to Investigations and did not have a partner that day and he was not assigned any vehicles.*

#### **Memo Book Entries**

Det. Buehler recorded in his memo book that on March 12, 2013, at 12:30 p.m., he responded to § 87(2)(b) in Brooklyn. At 2:30 p.m., Det. Buehler returned to his command. (encl. 8A-8B).



### **Arrest Report/Complaint Report**

Det. Buehler arrested § 87(2)(b) for § 87(2)(b), § 87(2)(a) 160.50. In the details section, Det. Buehler noted that at the time and place of occurrence, § 87(2)(b), § 87(2)(a) 160.50

Det. Buehler also noted that no force was used during the arrest. (encl. 8C-8H).

### **Criminal Court Complaint**

§ 87(2)(b), § 87(2)(a) 160.50  
(encl. 8I).

### **CCRB Statement**

Det. Buehler was interviewed at the CCRB on April 1, 2014 (encl. 8U-8W).

Det. Buehler's statement was consistent with that of Sgt. Esposito with the following additional information. Det. Buehler learned of threatening messages which caused Det. Moglia to fear for his safety and the safety of his family. Det. Moglia provided the e-mails to his supervisor, who then forwarded the e-mails to the NYPD Threat Assessment Unit. The Unit decided that there was probable cause to arrest § 87(2)(b) after reviewing the e-mails and conferring with the District Attorney's Office. § 87(2)(b) threatened Det. Moglia in his e-mails "suicide by cop." § 87(2)(b) also wrote on his website, dedicated to his dislike of Det. Moglia and the NYPD, that he wanted to bring Det. Moglia to justice and that Det. Moglia was trying to kill him and the only way to end this conflict was to commit a suicide by cop. Det. Buehler did not know how much time passed from the time Det. Moglia received the e-mails to the time the decision was made to arrest him.

Upon arrival at § 87(2)(b)'s residence, Det. Buehler, Det. Carney and Sgt. Esposito knocked on the door and a female, known to the CCRB as § 87(2)(b) answered. Det. Buehler knocked once before § 87(2)(b) answered. Det. Buehler asked § 87(2)(b) if it was § 87(2)(b)'s residence, and § 87(2)(b) said yes and invited the officers in the apartment. Det. Buehler asked § 87(2)(b) where § 87(2)(b) was in the apartment, and § 87(2)(b) showed them the door to § 87(2)(b)'s bedroom. Det. Buehler asked if there was anyone else in the apartment, and § 87(2)(b) said that there was one more roommate who resided in the apartment. Det. Buehler believed that § 87(2)(b) was the only person in the apartment aside from § 87(2)(b).

Det. Buehler, Det. Carney and Sgt. Esposito proceeded to knock on § 87(2)(b)'s bedroom door and called out his name but there was no answer. The door to § 87(2)(b)'s bedroom was unlocked, and the officers entered the bedroom. Det. Buehler, Det. Carney and Sgt.

Esposito did not wear raid gear or had their guns drawn. § 87(2)(b) was pretending to be asleep on his loft bed. Det. Buehler, Det. Carney and Sgt. Esposito announced themselves as the police while in the bedroom and asked § 87(2)(b) to get up. § 87(2)(b) saw the officers and climbed down the ladder from his loft bed. § 87(2)(b) came down the bed voluntarily and no officer had to pull him down the bed. Det. Buehler did not tell § 87(2)(b) “Get the fuck down,” and he did not hear any officer make that statement.

Det. Buehler informed § 87(2)(b) that he was under arrest for making threats and aggravated harassment. Det. Buehler told § 87(2)(b) to turn around and § 87(2)(b) complied. Det. Buehler handcuffed § 87(2)(b) without any issues. § 87(2)(b) was handcuffed standing up. Det. Buehler denied dislocating § 87(2)(b)'s shoulder, and he did not see any officer do so. § 87(2)(b) did not complain of injuries to his shoulder. § 87(2)(b) was not cursing during his arrest. § 87(2)(b) was not in the room where § 87(2)(b) was arrested, and he did not know where she was at that time.

§ 87(2)(b) became upset because he had a small dog in his room and was concerned that it would be left unsupervised. Det. Buehler told his partners to stand by while he took § 87(2)(b)'s dog for a walk and upon return gave the dog food and water.

§ 87(2)(b) was escorted out of the apartment and brought downstairs in an elevator. § 87(2)(b) complied with being escorted outside. While in the elevator, § 87(2)(b) asked the officers to shoot him but Det. Buehler did not respond. § 87(2)(b) did not resist being walked to the police vehicle or getting inside the vehicle. Det. Buehler did not remember if § 87(2)(b) was kicking at any point during the incident. Det. Buehler transported § 87(2)(b) to the Midtown North Detective Squad for arrest processing. § 87(2)(b) did not appear to be under the influence of drugs, medications or alcohol.

§ 87(2)(b) informed Det. Buehler that he was claustrophobic and Det. Buehler placed § 87(2)(b) in a room that resembled that of the CCRB interview room. § 87(2)(b) did not ask for medical treatment during the incident. Det. Buehler added that he transported § 87(2)(b) to Central Booking where he was seen by EMS. § 87(2)(b) was asked if he needed medical treatment, and § 87(2)(b) said no. The EMS cleared § 87(2)(b) and accepted him to Correction.

Later that day, Det. Buehler obtained a search warrant and returned to § 87(2)(b)'s apartment to confiscate his electronic equipment. Det. Buehler was presented with the arrest warrant issued for § 87(2)(b) which noted that § 87(2)(b) resided in New York County. Det. Buehler stated that § 87(2)(b) resided in Kings County and that it was a typo.

Det. Buehler added that three to six months ago, § 87(2)(b) wrote a letter to him asking to get his computer back. § 87(2)(b) included the District Attorney's release form with the letter which indicated to contact the Midtown North Detective Squad. In the letter, § 87(2)(b) indicated that if Det. Buehler did not return his computer equipment to him, § 87(2)(b) would file a complaint against him. Someone from the Midtown North Detective Squad contacted § 87(2)(b) and informed him that the Midtown North Detective Squad was not in possession of his computer and that his computer was at the Computer Crime Squad or at the Property Clerk's Office.

Det. Buehler did not bring the letter to the CCRB because he could not find it.

### **Officer Not Interviewed**

As per MAS, Det. Brendan Carney retired on October 1, 2013 (encl. 17B). A search of Lexis Nexis yielded 23 results for Brendan Carney (encl. 15G-15M). A request for Det. Carney's date of birth from MAS yielded negative results (encl. 17A).

## **Medical Records**

§ 87(2)(b)

On § 87(2)(b), § 87(2)(b) was examined by § 87(2)(b). § 87(2)(b) complained of left shoulder pain with decreased range of motion as well as pain to both wrists. The general examination of § 87(2)(b) revealed left shoulder tenderness, decreased range of motion, inability to fully elevate shoulder, bilateral tenderness to wrists and a light bruise on left wrist. § 87(2)(b) gave § 87(2)(b) a sling and instructed him to rest his arm, apply ice and take Motrin for pain. An x-ray of § 87(2)(b)'s left shoulder showed no acute fractures or dislocation. There were no soft tissue swelling or abnormal calcifications identified. § 87(2)(b) noted in the clinical indications caption that § 87(2)(b) has a history of left shoulder dislocation and recent manhandling. (see Medical Records Folder).

§ 87(2)(b)

On § 87(2)(b) and § 87(2)(b), § 87(2)(b) was examined by § 87(2)(b). § 87(2)(b) diagnosed § 87(2)(b) with left shoulder labrum tear and instability. § 87(2)(b) recommended surgery to repair the tear.

On § 87(2)(b), § 87(2)(b) was seen by § 87(2)(b) and complained of pain to his left shoulder. The examination of § 87(2)(b)'s left shoulder on § 87(2)(b), revealed no obvious deformity. § 87(2)(b) had tenderness to palpation along the AC joint and pain. § 87(2)(b)'s x-ray of the left shoulder failed to reveal any bony abnormalities. § 87(2)(b) was assessed with instability of left shoulder with worsening symptoms since his recent altercation. Dr. Nicholas again recommended surgery to repair the torn muscle and § 87(2)(b) agreed. (see Medical Records Folder).

§ 87(2)(b)

## **NYPD Documents**

### **Search Warrant**

On March 12, 2013, at 10:20 p.m., Det. Buehler obtained a search warrant for § 87(2)(b)'s apartment. (encl. 8J-8K).

### **Other Evidence**

#### **E-mails**

§ 87(2)(b) sent two e-mails to Det. Moglia on March 10, 2013, at 12:31 a.m. and at 8:44 a.m. The first e-mail was consistent with the Complaint Report and the Arrest Report prepared by Det. Buehler. The second e-mail contained insults of personal nature against Det. Moglia, where § 87(2)(b) called him a "pig." § 87(2)(b) threatened to file a law suit against Det. Moglia. (encl. 8R-8T).

### **Arrest for Incident and Disposition**

- On § 87(2)(b), § 87(2)(b)'s criminal case was adjourned in contemplation of dismissal (encl. 13A-13D).

### **Status of Civil Proceedings**

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of May 22, 2014 (encl. 14L).

### **Civilian Criminal History**

- § 87(2)(b)  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

### **Civilian CCRB History**

- § 87(2)(b)  
[REDACTED]  
[REDACTED]

### **Subject Officers CCRB History**

- Det. Buehler has been a member of the service for sixteen years and there are no substantiated CCRB allegations against him (encl. 2A).
- Sgt. Esposito has been a member of the service for sixteen years and there are no substantiated CCRB allegations against her (encl. 2B).

### **Conclusion**

### **Identification of Subject Officers**

Det. Buehler and Sgt. Esposito acknowledged entering § 87(2)(b) in Brooklyn, and to arresting § 87(2)(b) in his bedroom. Because Sgt. Esposito was the supervisor at the scene, an entry allegation is pleaded against her. § 87(2)(b) said that all of the officers who entered his room, with the exception of the female officer, had their guns pointed at him. § 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(b) said that officers shouted multiple times at him, "Get the fuck down."

§ 87(2)(g)  
[REDACTED]  
[REDACTED]  
[REDACTED]

## **Investigative Findings and Recommendations**

### **Allegations Not Pleaded**

Sgt. Esposito acknowledged having her gun pointed when she entered § 87(2)(b)'s apartment. However, § 87(2)(b) did not attribute that allegation to Sgt. Esposito. § 87(2)(g)

### **Allegation A – Abuse of Authority: Sgt. Alison Esposito authorized the entry of § 87(2)(b) in Brooklyn.**

§ 87(2)(g) It is also undisputed that Sgt. Esposito and Det. Buehler did not have an arrest warrant for § 87(2)(b) when they entered his bedroom, inside § 87(2)(b) § 87(2)(b) heard from inside his bedroom the officers rush into the apartment and ask § 87(2)(b) for his bedroom. § 87(2)(b) heard § 87(2)(b) tell the officers, “This is his bedroom,” and added that she did not know if § 87(2)(b) was inside.

§ 87(2)(b) stated that she opened the apartment door after hearing the officers knock for ten to twenty minutes. When § 87(2)(b) opened the door, she saw the officers who asked her who she was, and § 87(2)(b) explained. The officers asked where § 87(2)(b) was, and § 87(2)(b) said he was in his bedroom. The interaction between § 87(2)(b) and the officers took place in the hallway of the apartment. § 87(2)(b) was in his bedroom sleeping. § 87(2)(b) stated that § 87(2)(b) was passed out on pain killers and some other drugs she could not name. § 87(2)(b) then went to her bedroom following her conversation with the officers.

Det. Buehler stated that § 87(2)(b) invited the officers inside after she confirmed that it was § 87(2)(b)'s residence. Det. Buehler asked § 87(2)(b) where § 87(2)(b) was in the apartment, and § 87(2)(b) showed them the door to § 87(2)(b)'s bedroom. Once Det. Buehler gained entry into § 87(2)(b)'s apartment, he did not see § 87(2)(b).

Sgt. Esposito, however, provided a different version of how the officers gained entry into the apartment. She stated that § 87(2)(b) opened the door after the officers had been knocking for five to ten minutes and announced themselves as police. § 87(2)(b) was visibly shaken and appeared to be petrified. Sgt. Esposito explained that she did not expect to see a female but saw that § 87(2)(b) began retreating back into the apartment. Sgt. Esposito became concerned for the safety and wellbeing of § 87(2)(b). She grabbed § 87(2)(b) by her arm and pulled her into the hallway. § 87(2)(b) complied with exiting the apartment. Sgt. Esposito asked § 87(2)(b) if § 87(2)(b) was inside, and § 87(2)(b) said that she thought he was. Sgt. Esposito perceived § 87(2)(b)'s response, her frightened state and the time it took her to open the door to be unsettling. § 87(2)(b) did not make any statements to the officers protesting their entry into the apartment. Det. Carney stayed with § 87(2)(b) in the hallway while Sgt. Esposito and Det. Buehler entered § 87(2)(b)'s apartment with their guns drawn.

The Supreme Court held in *Payton v. New York*, 445 U.S. 573 (1980), that probable cause alone does not justify an arrest at a suspect's home in the absence of an arrest warrant (encl. 1A-1Z). However, a voluntary consent to enter the premises is an exception to the rule in *Payton*. The court held in *People v. Washington*, 209 A.D.2d 817 (1994), that voluntary consent was present when the occupant stepped aside and raised no objection to the officers' entry (encl. 1AA-1CC). In *People v. Brown*, 234 A.D.2d 211 (1996), the court supported implied consent exception to *Payton* when it upheld an arrest of a suspect following the officer's conversation with an occupant of the apartment who left the door open for the officers to enter (encl. 1DD-1HH). Furthermore, the court in *People v. Sloan*, 242 A.D.2d 760 (1997), upheld an arrest of a suspect who was hiding in a bathroom, where there is a reasonable expectation of privacy, after a

roommate informed the officers that the suspect was not in the apartment but gave his consent to the officers to look around (encl. 1II-1KK).

§ 87(2)(g)

**Allegation B – Force: Det. Kevin Buehler pointed his gun at § 87(2)(b)**

§ 87(2)(b) alleged that Det. Buehler had his gun pointed at him when he entered his bedroom. Det. Buehler denied having his gun pointed but Sgt. Esposito stated that she and Det. Buehler entered the apartment with their guns drawn.

In *Police Department v. Gliner*, OATH Index No. 955/00, the court ruled that a police officer “has a broad discretion to display his weapon whenever he feels his life or the life of another person is endangered” (encl. 1LL-1DDD). The court explained that whether the officer abused that right is determined in the totality of the circumstances.

§ 87(2)(g)

**Allegation C – Force: Det. Brendan Carney pointed his gun at § 87(2)(b)**

**Allegation D – Discourtesy: Det. Brendan Carney spoke discourteously to § 87(2)(b)**

**Allegation I – Abuse of Authority: Det. Brendan Carney did not obtain medical treatment for § 87(2)(b)**

Det. Carney has retired from the Police Department on October 1, 2013. § 87(2)(g)

**Allegation E – Discourtesy: Det. Kevin Buehler spoke discourteously to § 87(2)(b)**

**Allegation F – Discourtesy: Sgt. Alison Esposito spoke discourteously to § 87(2)(b)**

§ 87(2)(b) alleged that officers told him, “Get the fuck down,” while he was up in his bed. § 87(2)(b) only heard § 87(2)(b) scream and yell, and she did not hear the officers’ response. Det. Buehler denied telling § 87(2)(b) the aforementioned discourtesy, and he did not hear Sgt. Esposito make the statement, and vice versa. § 87(2)(g)

**Allegation G – Abuse of Authority: Det. Kevin Buehler did not obtain medical treatment for § 87(2)(b)**

**Allegation H – Abuse of Authority: Sgt. Alison Esposito did not obtain medical treatment for § 87(2)(b)**

§ 87(2)(b) alleged that he was asking for medical help throughout the incident but the officers told him that the quickest way to get out of the police custody was to be quiet and comply.

Det. Buehler stated that § 87(2)(b) did not ask for medical treatment during the incident. Det. Buehler added that he transported § 87(2)(b) to Central Booking where he was

seen by EMS. § 87(2)(b) was asked at Central Booking if he needed medical treatment, and § 87(2)(b) said no. The EMS cleared § 87(2)(b) and accepted him to Correction.

Sgt. Esposito stated that § 87(2)(b) told the officers that he was on medication but Sgt. Esposito and Det. Buehler told him that they could not give him any. Sgt. Esposito and Det. Buehler offered to take § 87(2)(b) to a hospital but § 87(2)(b) refused. At the stationhouse, Det. Buehler offered to obtain medical attention for § 87(2)(b) and explained that he would not be accepted to Manhattan Central Booking if he claimed injuries. § 87(2)(b) stated that he wanted to see a judge and wanted the incident to be over soon. § 87(2)(b) was asked at least three times if he wanted medical attention, and he declined it each time.

§ 87(2)(g)

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Team: 4

Investigator: _____	<u>Stanislav A. Sazonov</u>	<u>05/22/2014</u>
Signature	Print	Date

Supervisor: _____	_____	_____
Title/Signature	Print	Date

Reviewer: _____	_____	_____
Title/Signature	Print	Date

Reviewer: _____	_____	_____
Title/Signature	Print	Date